

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM, INC.,

Plaintiff,

v.

DISCOVERY COMMUNICATIONS, INC.,

Defendant.

No. C09-0681RSL

ORDER GRANTING PLAINTIFF'S  
MOTION TO COMPEL

This matter comes before the Court on “Amazon.com, Inc.’s Motion to Compel Discovery of the Accused Discovery On-Line Store.” Dkt. # 69. Plaintiff asserts that defendant’s on-line store infringes four of plaintiff’s patents related to refining search queries and/or providing product recommendations. The allegations of the complaint are not limited by date: plaintiff alleges that defendant “has been, currently is, and will continue to directly and/or indirectly infringe” plaintiff’s patents. Complaint at ¶¶ 10, 13, 16, and 19. Plaintiff seeks information regarding prior iterations of defendant’s website to determine the duration of Discovery’s infringement. Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows:

(1) This matter can be decided on the papers. Defendant’s request for oral argument is DENIED.

(2) Plaintiff’s preliminary infringement contentions set forth specific theories of infringement and explicitly contend that the accused website “has operated in the past using

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1 URLs other than <http://store.discovery.com>, including at least <http://www.discoverystore.com>  
2 and <http://shopping.discovery.com>.” Decl. of Brian Ankenbrandt (Dkt. # 70), Ex. 1 at 2.  
3 Defendants argue that this contention is false, but refuse to provide discovery regarding the prior  
4 iterations of its website.

5 (3) Despite its refusal to provide discovery, defendant has presented evidence regarding  
6 its pre-April 1, 2009, website in support of its motion for summary judgment.

7 (4) Plaintiff has diligently sought information regarding the prior iterations of  
8 defendant’s website. This information has not been public since the date on which this action  
9 was filed and, in the absence of the requested discovery, plaintiff will be unable to determine  
10 how long the alleged infringement has continued.

11 (5) Contrary to defendant’s somewhat misleading assertions of production, there is no  
12 evidence that defendants have provided any documents that are responsive to plaintiff’s  
13 discovery requests.

14 (6) Discovery’s non-disclosure was not substantially justified. Plaintiff is entitled to an  
15 award of the reasonable expenses incurred in making this motion, including attorney’s fees.

16  
17 For all of the foregoing reasons, plaintiff’s motion to compel is GRANTED.  
18 Defendant shall, within twenty-one days of this order, supplement its responses to  
19 Interrogatories No. 1, 2, 3, and 7 and Requests for Production No. 14-25, 28, 32, 35, and 41 in  
20 accordance with this order for the period May 15, 2003, to the present. Plaintiff shall submit,  
21 within ten days of this order, a declaration regarding the reasonable fees and costs incurred in  
22 making this motion.

23 Dated this 28th day of May, 2010.

24 

25 Robert S. Lasnik

26 United States District Judge